

**THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF  
THE TTAB**

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ejs

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Modern Builders Supply, Inc.

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Serial No. 78058068

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Oliver E. Todd, Jr. of MacMillan, Sobanski & Todd, LLC for  
Modern Builders Supply, Inc.

Raul Cordova, Trademark Examining Attorney, Law Office 114  
(Margaret Le, Managing Attorney).

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Before Seeherman, Hairston and Drost, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Modern Builders Supply, Inc. has appealed from the  
final refusal of the Trademark Examining Attorney to  
register MASTERTECH as a trademark for "non-metallic  
windows and doors."<sup>1</sup> Registration has been refused pursuant

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<sup>1</sup> Application Serial No. 78058068, filed April 12, 2001. The  
application was originally based on Section 1(b) of the Act  
(intent to use). After a notice of allowance issued, applicant

on the basis that applicant failed to submit a specimen showing use of the applied-for mark for the identified goods.

Applicant and the Examining Attorney have filed appeal briefs. Applicant did not request an oral hearing.

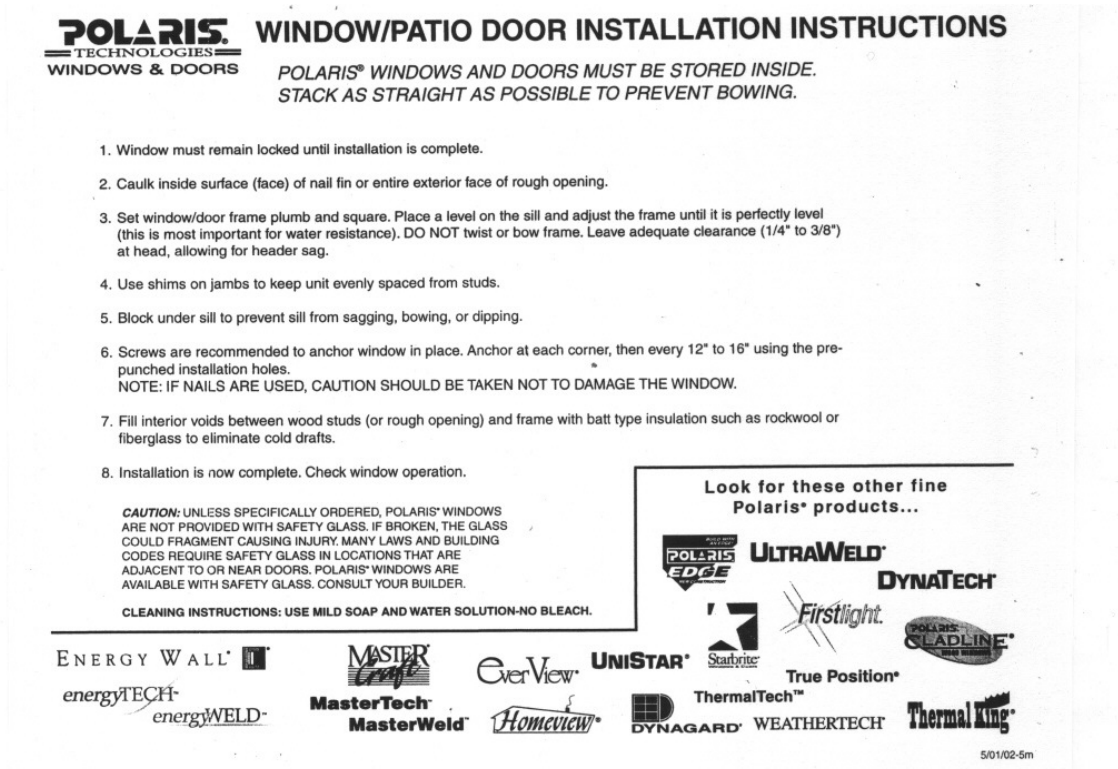
Trademark Rule 2.88(b)(2) provides that the Statement of Use must include "one specimen of the mark as actually used in commerce." It refers to Trademark Rule 2.56 for the requirements for specimens. Trademark Rule 2.56(a) provides, in part, that a statement of use under Rule 2.88 must include one specimen showing the mark as used on or in connection with the goods. Rule 2.56(b)(1) further provides, in part, that a trademark specimen is a label, tag, or container for the goods, or a display associated with the goods."

In order to determine whether applicant's specimen shows the mark as used on the goods, we must examine the specimen itself. Applicant has submitted what it describes as a label that is "affixed to the packaging of all windows and doors manufactured by Polaris Technologies." Response dated October 8, 2002. Applicant has further explained

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filed its Statement of Use on May 22, 2002. The refusal which is the subject of this appeal stems from the examination of the Statement of Use.

that Polaris Technologies is applicant's window and door manufacturing division. The "label" is shown below, in reduced form:



As can be seen on the reproduced specimen, the applied-for mark MASTERTECH is shown on the label in a box headed, "Look for these other fine Polaris® products...." There follows a list of various trademarks, including ENERGY WALL, ENERGYTECH, ENERGYWELD, MASTERCRAFT and EVERVIEW. Included in this list is MASTERTECH.

It is clear to us, as it would be clear to anyone viewing this specimen, that the mark for the product on which the label appears is POLARIS, and that MASTERTECH, while a mark used by applicant's Polaris division, is not

the mark under which the goods to which the label is applied are sold. On the contrary, the label states unequivocally that MASTERTECH is a trademark for an "other" Polaris product. Accordingly, the label which applicant has submitted as its specimen does not show use of the applied-for mark for the goods and, at most, as the Examining Attorney contends, would constitute only advertising for applicant's MASTERTECH products.

Decision: The refusal of registration is affirmed.